Local Lodge No. 1173, affiliated with Machinists Automotive Trades District Lodge No. 190, International Association of Machinists and Aerospace Workers[1] *and* Curtis L. Carter d/b/a Alhambra Motors. Case 32-CP-166

February 2, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 23, 1982, Administrative Law Judge Jay R. Pollack issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Local Lodge No. 1173, affiliated with Machinists Automotive Trades District Lodge No. 190, International Association of Machinists and Aerospace Workers, Pleasant Hill, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that the complaint allegations not specifically found herein be, and they hereby are, dismissed.

[1] Respondent's name appears as amended at the hearing.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Member Jenkins does not rely on *International Brotherhood of Electrical Workers, Local 265 (R P & M Electric)*, 236 NLRB 1333 (1978), enfd. 604 F.2d 1091 (8th Cir. 1979).

[3] The General Counsel did not except to the Administrative Law Judge's dismissal of the allegation that Respondent's second period of picketing, commencing on June 14, 1982, was violative of Sec. 8(b)(7)(C).

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge: I heard this case in Oakland, California, on August 9, 1982.[1] Curtis L. Carter d/b/a Alhambra Motors (the Employer) filed an unfair labor practice charge on June 18 against Local Lodge No. 1173, affiliated with Machinists Automotive Trades District Lodge No. 190, International Association of Machinists and Aerospace Workers (Respondent or the Union). On June 20, the Regional Director for Region 32 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing against Respondent, alleging, in substance, that Respondent engaged in unfair labor practices within the meaning of Section 8(b)(7)(C) of the National Labor Relations Act, as amended. Respondent filed an answer denying the commission of the alleged unfair labor practices.

All parties were given full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Only the General Counsel filed a post-trial brief. Based upon the entire record and from my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Curtis L. Carter is the sole proprietor of Alhambra Motors which operates three businesses, Curtis Carter Used Cars, Automotive Engineering, and Innovation Body Shop, as a single integrated enterprise in Martinez, California. The fictitious name, registered with the State of California, for all three businesses is Curtis L. Carter d/b/a Alhambra Motors, the Employer herein. During the 12 months prior to the issuance of the complaint, the Employer derived gross revenues in excess of $500,000 and purchased and received goods valued in excess of $5,000 which originated outside the State of California. Accordingly, Respondent admits and I find the Employer to be engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits and I find that it is a labor organization within the meaning of Section 2(5) of the Act. Respondent further admits that it is not currently certified as the collective-bargaining representative of any of the employees of the Employer.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Evidence*

Prior to opening Curtis Carter Used Cars on May 1, 1981, Curtis L. Carter had operated two automobile dealerships which were party to collective-bargaining agreements with Respondent. These dealerships were op-

[1] Unless otherwise stated, all dates hereafter refer to the year 1982.

erated by a corporation, Curt Carter Ford, Inc.[2] In late 1980, the corporation experienced financial difficulties and filed a petition in bankruptcy in January 1981. That bankruptcy petition was still pending at the time of the hearing in the instant matter. The employer benefit trust funds, provided for in the collective-bargaining agreement between the corporation and Respondent, were among the creditors in the bankruptcy case. The Employer commenced operation of Automotive Engineering, its repair shop, and Innovation Body Shop, its body shop, in January 1982.

On February 20, Manuel Francis, an area director of District Lodge 190 assigned to oversee Respondent, visited the Employer's repair shop. Francis testified that he visited the shop at the request of two union members, Mike and Roland (last names unknown). According to Francis, these union members had previously told him that they were going into business as a partnership and wanted Francis to sign them up for health and welfare coverage. Francis spoke with Mike, Roland, and Gary McElerny, service manager. McElerny said that the operation would be nonunion. Francis told Mike and Roland that, if all three were partners, the two union members could outvote McElerny. In this conversation McElerny informed the others that Curtis Carter had an interest in the business.[3] Shortly thereafter, Curtis Carter, owner of the Employer, arrived. Carter asked what Francis was doing there. Francis answered that he was there to sign up his members for health and welfare coverage. Carter said, "There's not a man in this shop wants you here, you're not representing anybody, you don't have any signed cards. Now please go away." Francis then left the shop.

On March 1, Francis caused the Employer to be picketed with signs bearing the following legend:

THIS SHOP UNFAIR
DOES NOT COMPLY WITH
UNION WAGES AND BENEFITS
MACHINISTS LODGE 1173
TEAMSTERS LOCAL 315

Francis testified that the purpose of the picketing was to obtain health and welfare benefits for his two union members and that, in order to obtain such coverage, he had to obtain a contract. Francis further testified that the contract would also apply to any employees later hired by the recently opened shop. After the picketing commenced, the two union members ceased working for the Employer. However, the picketing continued until April 22. The parties stipulated that the picketing had the effect of disrupting deliveries to the Employer's facilities. The picketing was stopped as a result of a compromise between the Union and the Employer that the Employer would withdraw its unfair labor practice charges and that the Union would cease picketing. Francis testified that, after his union members ceased working for the Employer, he continued the picketing to "let the public know the type of person that Carter was"; i.e., that Carter "didn't pay his bills, didn't pay standard area rates and so forth."

On June 14, Respondent, at Francis' instruction, commenced picketing the Employer's facility with signs bearing the following legend:

UNFAIR
AUTO MACHINISTS
CURT CARTER OWES MONEY

This second phase of picketing continued to at least June 30. On June 21 the Employer filed a representation petition in Case 32-RM-263. Thereafter, the Employer attempted to withdraw the petition and on July 15 the Regional Director approved the withdrawal of the petition and closed the representation case.

On June 14, Carter called Francis to question him about the renewed picketing. However, Francis was away on vacation. Robert Durham, a union representative of Machinists District Lodge 190 assigned to Respondent, returned Carter's call in Francis' absence. Carter asked what the picket was doing. Durham answered, "Well, the picket is doing what he was doing before, advertising with the picket sign." Durham told Carter that Francis was on vacation and suggested that Carter call Francis in about a week. Durham then left a message for Francis to call Carter.[4]

On or about June 21, Francis returned Carter's call. Francis testified that Carter asked why the Union was picketing. Francis said, "What's the picket sign say?" and Carter answered, "Owes money." Francis asked if that was factually correct and Carter said, "Hell, I owe money to a lot of people." Carter said that it was Curt Carter Ford, Inc., the corporation in bankruptcy, which owed the money. Francis said that if Carter had any further questions to talk to Respondent's attorney.[5] Carter answered that the Union would hear from his attorney.

Carter testified that he asked Francis, "What's the picket doing back?" and said, "I thought we had an agreement." Francis answered, "Well, Curt, you know you owe us money." Carter said, "That's an awful back door way of coming after me because you know that I don't owe you the money. My corporation probably owes three or four hundred thousand dollars to different entities." Carter told Francis that it was simply a matter of bankruptcy and that the corporation had been in a chapter 11 bankruptcy since January 1981. Carter asked Francis, "How long are you going to keep harassing me?" According to Carter, Francis answered, "You know, there's a lot of union shops in the area that are

[2] Curtis Carter was president of the corporation and its only stockholder.

[3] At the time of this conversation, Francis was under the impression that Mike, Roland, and McElerny were partners in the recently opened repair shop. Francis had no prior knowledge of Carter's ownership of the repair shop or adjacent body shop.

[4] Carter did not recall this conversation while testifying on direct or cross-examination. However, when recalled on rebuttal, after Durham had testified, Carter affirmed that he had such a conversation with Durham. Carter did not deny the substance of the conversation as testified to by Durham.

[5] This is the only conversation that Francis and Carter had concerning the debt to the trust funds or the second period of picketing. Prior to the commencement of picketing, Francis informed the trust funds of his intention to picket the Employer.

pressuring me to keep you from having a nonunion shop," and "If you sit down and talk with me, we can probably have the picket go away." I have decided to credit Francis' version of this conversation over that of Carter. In observing Carter on the witness stand, I found Carter's anger over the picketing to cast serious doubts upon his ability to accurately perceive or report the pertinent events. Francis, on the other hand, testified to events in an objective manner and did not attempt to color the facts to aid the Union's cause. Francis related the facts without regard to whether those facts were favorable or unfavorable to the legal issues being litigated by the parties.

With regard to the second period of picketing, Francis testified that the purpose of the picketing was to advertise to the public the type of person Carter was; i.e., that Carter had not paid his debts. As stated earlier, Curt Carter Ford, Inc., the corporation, owed moneys to the employee benefit trust funds provided for in the corporation's collective-bargaining agreements.

B. *Analysis and Conclusions*

Section 8(b)(7)(C) of the Act, in pertinent part, makes it an unfair labor practice for an uncertified labor organization to picket an employer "where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees . . . where such picketing has been conducted without a petition under Section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing."

Section 8(b)(7) applies even if there are legitimate purposes for the picketing; it is sufficient to make out a violation of Section 8(b)(7) if *one* of the union's objects is recognitional or organizational. See, e.g., *International Brotherhood of Electrical Workers, Local 265 (R P & M Electric)*, 236 NLRB 1333, 1335 (1978), enfd. 604 F.2d 1091 (8th Cir. 1979); *Building Service Employees Union, Local No. 87, AFL-CIO (Liberty House/Rhodes)*, 223 NLRB 30, 33 (1976). Language used in the picket signs does not necessarily establish the real object or objects of the picketing. Whether a union pickets for recognition or organization is a question of fact[6] to be determined by the union's overall conduct. *Teamsters Local Union No. 5, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Ind. (Barber Brothers Contracting Co., Inc.)*, 171 NLRB 30 (1968), enfd. 405 F.2d 864 (5th Cir. 1968); *Building Service Employees Union, Local No. 87, supra.*

There can be little doubt that the first period of picketing, March 1 to April 22, was for a recognitional object. Francis testified that initially it was his purpose to obtain health and welfare benefits for his two union members. In order to obtain such benefits, Francis had to secure a collective-bargaining contract from the Employer. Even after the members ceased working for the Employer, Francis continued the picketing. There is no evidence that the nature of the picketing or the desire to obtain a collective-bargaining agreement ever changed. Thus, under all of the circumstances, I find at least "an object" of Respondent's March-April picketing was to seek or obtain recognition as the bargaining representative of the Employer's employees. I find that Respondent, by picketing the Employer for the proscribed recognitional object for a period of more than 30 days without the filing of a representation petition, violated Section 8(b)(7)(C) of the Act.

The fact that the two union members ceased working for the Employer after the picketing commenced, and, therefore, that the Employer had no employees working, does not affect the conclusion herein. The contract Francis was seeking would have applied to employees later hired by the new repair shop. Picketing in excess of 30 days to obtain such a contract violates Section 8(b)(7)(C). *Local 542, International Union of Operating Engineers, AFL-CIO (R. S. Noonan, Inc.)*, 142 NLRB 1132 (1963), enfd. 331 F.2d 99 (3d Cir. 1964), cert. denied 379 U.S. 889.

The second period of picketing, June 14 to June 30, presents a more difficult issue. After an informal agreement to cease picketing the Employer and after a hiatus of over 50 days, the Union commenced picketing with different picket signs. The new picket signs advertised to the public that "Curt Carter Owes Money." In fact, Curt Carter Ford, Inc., owed money to the employee benefit trust funds. The General Counsel and the Employer argue that the picketing in June was a continuation of the earlier recognitional picketing.

In situations where unions have been found to have engaged in picketing for an illegal objective and have sought to picket for another objective, the Board has long rejected the application of a presumption of the continuity of the illegal objective. See, e.g., *International Brotherhood of Electrical Workers, Local 453 (Southern Sun Electric Corporation)*, 242 NLRB 1130 (1979), reversed and remanded 620 F.2d 172 (9th Cir. 1980); *Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO (Altemose Construction Co.)*, 122 NLRB 1276, 1280 (1976); *Local 344, Retail Clerks International Association, AFL-CIO, etc. (Alton Myers Brothers, Inc.)*, 136 NLRB 1270 (1962). The General Counsel must show substantial independent evidence to support the contention that the unlawful object continued.

As discussed earlier, I do not credit Carter's testimony that Francis sought bargaining in return for the cessation of picketing. Thus, there is no credible evidence of a demand for recognition or bargaining. Next, the General Counsel argues that the picketing must have been a pretext because it was the corporation and not the Employer which owed money to the subject trust funds.[7] However, the issue here is not the validity of the claim advertised to the public, but, rather, whether the Union's object in picketing was recognitional in nature. For the following reasons, I find that there is insufficient evidence to establish that Respondent had any object for picketing other than that advanced by Francis; i.e., to

[6] *N.L.R.B.* v. *Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* [*Woodward Motors*], 314 F.2d 53 (2d Cir. 1963).

[7] There is no case before me alleging that Respondent had unlawfully enmeshed the Employer in a dispute between Respondent and the corporation.

advertise to the public that Curtis Carter owed moneys under his collective-bargaining agreements. First, Curt Carter Ford, Inc., did, in fact, owe moneys to the employee benefit trust funds. Second, Carter was the principal of the corporation and its only stockholder. Third, there is no evidence that Francis was knowledgeable as to any limitations imposed by the bankruptcy proceedings on Carter's ability to pay the moneys owed to the trust funds. Fourth, Francis' failure to demand payment is not inconsistent with a desire to advertise to the public, including potential employees, Carter's past financial problems. Fifth, when Carter questioned Durham and Francis about the picketing, he was told that the picket signs revealed the purpose of the picketing—no demand for recognition or bargaining was made. As stated earlier, the burden is on the General Counsel to establish by a preponderance of the evidence that the second period of picketing was for the proscribed recognitional or organizational object. The Board has long held that Section 8(b)(7) is only directed against picketing for recognition, bargaining, or organization and not against picketing for other objects.[8] Insofar as picketing is directed to advertising a dispute over trust fund payments not involving an object of recognition, bargaining, or organization, it falls outside the area proscribed by Section 8(b)(7). Thus, for all the reasons set forth above, I conclude that the General Counsel had failed to prove that the second period of picketing was for an object proscribed by Section 8(b)(7).

CONCLUSIONS OF LAW

1. The Employer, Curtis L. Carter d/b/a Alhambra Motors, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, Local Lodge No. 1173, affiliated with Machinists Automotive Trades District Lodge No. 190, International Association of Machinists and Aerospace Workers, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent is not currently certified as the collective-bargaining representative of any of the employees of the Employer.

4. By picketing the Employer from March 1 through April 22, 1982, in the manner described above, with an object of forcing or requiring the Employer to recognize or bargain with Respondent as the representative of the Employer's employees, where such picketing has been conducted without a petition under Section 9(c) of the Act being filed, Respondent has violated Section 8(b)(7)(C) of the Act.

5. The General Counsel has failed to prove by a preponderance of the evidence that Respondent's picketing of the Employer during the period of June 14 through June 30, 1982, violated Section 8(b)(7)(C) of the Act.

6. The unfair labor practices found above in Conclusions of Law 4, occurring in connection with the interstate operations of the Employer, are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

7. Except as specifically found above, Respondent has not committed any unfair labor practices.

THE REMEDY

Having found that Respondent has violated Section 8(b)(7)(C) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[9]

The Respondent, Local Lodge No. 1173, affiliated with Machinists Automotive Trades District Lodge No. 190, International Association of Machinists and Aerospace Workers, Pleasant Hill, California, its officers, agents, and representatives, shall:

1. Cease and desist from picketing, or causing to be picketed, Curtis L. Carter d/b/a Alhambra Motors, where an object thereof is forcing or requiring such Employer to recognize or bargain with Respondent as the collective-bargaining representative of its employees, or forcing or requiring employees of such Employer to accept or select Respondent as their collective-bargaining representative, at a time when Respondent is not certified as such representative and where such picketing has been conducted without a petition under Section 9(c) of the Act being filed within a reasonable period of time not to exceed 30 days from the commencement of such picketing.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its offices and meeting halls copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by the authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 32 signed copies of said notice in sufficient numbers for posting by Curtis L. Carter d/b/a Alhambra Motors, if willing, in places where notices to employees are customarily posted.

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[8] *Waiters & Bartenders Local 500, etc. (Mission Valley Inn)*, 140 NLRB 433 (1963).

[9] All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT picket, or cause to be picketed, Curtis L. Carter d/b/a Alhambra Motors, where an object thereof is forcing or requiring such Employer to recognize or bargain with us at the collective-bargaining representative of its employees, or forcing or requiring employees of such Employer to accept or select us as their collective-bargaining representative, at a time when we are not certified as such representative and where such picketing has been conducted without a petition under Section 9(c) of the Act being filed within a reasonable period of time not to exceed 30 days from the commencement of such picketing.

LOCAL LODGE NO. 1173, AFFILIATED WITH MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE NO. 190, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS